

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----: Chapter 11
:
IN RE: : Case No. 1-17-40104
:
PRIME SIX INC : 271-C Cadman Plaza East
: Suite 1595
: Brooklyn, New York,
: 11201-1800
:
Debtor : April 18, 2018

TRANSCRIPT OF MOTION TO

BEFORE THE HONORABLE CARLA E. CRAIG
CHIEF JUDGE UNITED STATES BANKRUPTCY JUDGE

[5] Order Scheduling Initial Case Management
Conference.

[109] Order that the Debtor, Prime Six, Inc,
and/or any party in interest or their attorneys show
cause why an Order should not be entered (a) to lift
the stay for Landlord to bring an eviction of Debtor
for Debtor's Conduct in impairing the quiet enjoyment
of other tenants at 242 Flatbush Avenue, Brooklyn, New
York (the "Premises") and failing to exercise adequate
supervision over the conduct of its Premises that has
permitted the Premises to become disorderly in
violation of the Alcoholic Beverage Control Law; (b) to
compel Debtor to pay post-petition rent due, and/or (c)
Dismiss the Case with Prejudice; and (d) granting the
Landlord such other and further relief as the Court
deems just and proper. (RE: related documents(s) [108]
motion for Relief from Stay.
Confirmation Hearing.

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3 APPEARANCES:

4 For the New York State ENID STUART , ESQ.,
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General

6 New York, New York 10271
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9 For U.S. Trustee: RACHEL WEINBERG, ESQ.,
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11 U.S. Federal Office
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12 Suite 1006
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13 For IRS Department of EDWIN R. CORTES, ESQ.,
14 the Treasury, Creditor: U.S. Attorney's Office
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16 For Fang Reality, Inc, DAVID J. DOYAGA, ESQ.,
Creditor: 26 Court Street
Suite 1601
17 Brooklyn, New York 11242

18 For Prime Six, Inc.,
19 Debtor:
20
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22
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24
25

I N D E X

SPEAKER:

PAGE (s)

MR. JACOBS:

4, 16, 19, 21. 22. 29, 38

MR. DOYAGA:

14, 18, 20, 22

MS. WEINBERGER:

18, 40

MR. OFSHTEIN:

35

1 THE COURT CLERK: Calender number 36, 37 and
2 36, Prime Six. Case 17-40104.

3 MR. DOYAGA: For the Creditor, Fang Reality,
4 David J. Doyaga, Senior.

5 THE COURT CLERK: Appearances.

6 MS. WEINBERGER: Rachel Weinberger on behalf
7 of the United States Trustee.

8 MS. STUART: Enid Stuart of the New York State
9 Attorney General's Office for the Department of
10 Taxation.

11 MR. CORTEZ: Right. Edwin Cortez from the
12 U.S. Attorney's Office on behalf of the IRS.

13 MR. JACOBS: Good afternoon, Your Honor.
14 Randall Jacobs for the Debtor. I have with me Denis
15 Abramowitz, the accountant for the Debtor, and Mr. Off
16 stein (phonetic) , Sole Stocker (phonetic).

17 Ready?

18 THE COURT: Okay. Go ahead, please.

19 MR. JACOBS: As Your Honor may have seen, I
20 have filed a certification of balance, and I'm pleased
21 to advise that the plan has been accepted by the
22 Creditors to the extent that they voted and, although
23 that we're not a lot of votes, they was several
24 creditors who had, apparently, moved. Left no
25 forwarding address or gone out of business.

1 But I got back about ten returns.

2 Other than that, all the creditors were
3 notified and we got a, essentially, potential plan.

4 There was one vote that didn't specify the
5 amount, I didn't count that.

6 Ah, do you want to deal with the objections,
7 first, Your Honor?

8 THE COURT: Yes.

9 MR. JACOBS: Okay. Ah, as the Court may have
10 read from my note, from the filings, there was a
11 limited objection filed by the U.S. Trustee's Office,
12 with respect to a couple of items.

13 The lawsuit giving an item was the amount of
14 the amended proof of claim filed by the United States -
15 - the Fed -- the New York State Department of Taxation,
16 on April 2nd; which increased the amount of their
17 priority and secured and unsecured plan to buy
18 approximately \$50,788.71, I believe.

19 This resulted, apparently, from an amended
20 tax return that was filed by the Debtor's Accountant,
21 regarding prior history, going back as far as, I think,
22 the previous years of the prior bankruptcy in 2015.

23 That resulted in changes that caused the
24 increase in the taxes to New York State.

25 Which I wasn't aware of.

1 But we went through it, and so far, we've
2 agreed to it, conceptually, and we agreed to amend the
3 confirmation order to include a reference to the change
4 in additional taxes, so that results in a payment of
5 approximately \$529.50 -- and five cents a month,
6 additional, that has to be made each month by the
7 Debtor, pursuant to the plan.

8 THE COURT: For a -- for a total of how much
9 to be paid --

10 MR. JACOBS: \$14,553.85, by last count.

11 The other objection was to the Debtor's, um,
12 um, Mr. Ofshtein (phonetic) financial support for the
13 Debtor.

14 We supplied a copy of his last tax return. I
15 think that's sufficient. It shows a substantial amount
16 of income.

17 I've also -- I'm able to provide personal
18 bank accounts, but I'd rather not do that unless we
19 have to. I think it's sufficient that he's already put
20 up \$105,000 last summer when he had to, he came up with
21 the cash. And he's been able to cover all the expenses
22 so far.

23 There have been no administrative plans other
24 than that by the landlord, which we oppose, but we can
25 go into that later if you'd like.

1 But I think that the -- the issue about the
2 Debtor's ability to fund the plan or pay for it, has
3 been dealt with. And I believe we have no objection
4 remaining from the Trustee's Office on that.

5 MS. WEINBERGER: That's -- that's incorrect,
6 Your Honor.

7 Basically, the Debtor did provide tax returns
8 to the United States Trustee, and -- and filed them on
9 the docket. But that doesn't explain whether the
10 Debtor -- the Debtor's principal has enough cash to
11 make these payments. And this is the principal --
12 well, was personally liable, the law firm's expenses
13 may exceed the income generated by the tax return.

14 And, at the very least, the Debtor's
15 principal should sign some sort of affidavit that he is
16 able to contribute.

17 THE COURT: Is this -- of it -- the tax return
18 is for his law firm?

19 MS. WEINBERGER: Yes. It's for his -- it's
20 for the --

21 THE COURT: It's not for him personally?

22 MS. WEINBERGER: The Ofshtein Law Firm PC.

23 MR. JACOBS: It's a -- it's a one sole
24 propiership. It's a one man firm, Your Honor. So
25 there are no other sources of income. All the income

1 is his.

2 Whether -- if an affidavit is required, we
3 will provide it. That's -- it's easily done, Your
4 Honor.

5 THE COURT: Does -- what -- what will the
6 United State Trustee's Office like to see?

7 MS. WEINBERGER: Well, Your Honor, we'd like
8 to see, at the very least, that the principal should
9 provide an affidavit that he is the financial ability
10 to pay, number one, \$7500 a month towards the plan
11 payments.

12 And that number may need to go up in light of
13 the fact that the taxing authority's claim is
14 increased.

15 And, that he also has the financial ability
16 to make a \$50,000 payment in legal fees; and
17 professional fees, on behalf of the Debtor.

18 MR. JACOBS: Your Honor, if you'll note, that
19 in the -- in the plan funding agreement, we have
20 provided for an agreement made between the
21 professionals and the Debtor, and they agreed -- agreed
22 to take payments over a course of months when the
23 Debtor's business is highest in most -- the greatest
24 volume is generated, and the balance will be paid at
25 the -- at the same period. We have no problem taking

1 those payments over time.

2 THE COURT: Does their operating report show
3 cumulative -- cumulative? It does, doesn't it?

4 Okay. You're operating -- does your most
5 recent operating report show cumulative operations for
6 the period since the filing?

7 Will your -- the -- they're all -- they're
8 all supposed to show that.

9 Because I -- I'd like to take that number and
10 divide it by the number of months you've been in and
11 see how you've done on the average.

12 Do you have that?

13 Is that --

14 MR. JACOBS: I'm sorry, Your Honor.

15 Your Honor, Mr. Abramowitz advises that
16 that's not available yet, because you have to change
17 the amounts due on taxes. That changes all the
18 numbers.

19 But the bottom line is, the last monthly
20 operating report shows a profit of a hundred -- a
21 hundred thousand dollars plus.

22 THE COURT: I -- I -- you know, I'll -- I hope
23 that you'll forgive me, but this case has been in
24 bankruptcy for over a year now, and I don't remember
25 what deficits you ran at, on other -- and other

1 periods, so as to be able to --

2 MR. JACOBS: Your Honor, since the filing --

3 THE COURT: -- figure that.

4 MR. JACOBS: -- um, I -- I could update that
5 if you'd like, but I thought that we were clear, since
6 the filing in February, on the plan and disclosure
7 statement, with exhibits attached to -- to that had as
8 -- as of those days.

9 All the cash flow, profits and the months
10 that had sustained losses as well as it showed, of the
11 cash that you requested.

12 We amended all the prior -- well, the
13 operating reports to show that as well.

14 THE COURT: So -- but -- so the monthly
15 operating reports through what month show cumulative
16 results?

17 MR. JACOBS: I believe it was last month.

18 THE COURT: Through -- through February;
19 right. Is that right?

20 MR. JACOBS: I believe that's correct.

21 MS. WEINBERGER: Your Honor, the United States
22 Trustee had crunched it, the numbers, based on the
23 monthly operating reports filed in the Debtor, and that
24 the Debtor has a net monthly average income of \$11,153.
25 And we're -- and that's -- and that's not sustainable

1 or enough to make plan payments of minimum \$1400 --
2 \$14,000 a month.

3 THE COURT: And that's where the plan funding
4 agreement comes in.

5 MS. WEINBERGER: That's correct, Your Honor.

6 THE COURT: Okay. So I'm looking at the
7 February report to see that -- to see cumulative
8 operations.

9 Are they in there?

10 No, they're not.

11 Is this a -- is this really a small business?

12 Right.

13 So you've -- you've come -- crunch -- you're
14 numbers crunching went through what not -- what month?

15 MS. WEINBERGER: Through February 2018, Your
16 Honor.

17 THE COURT: Through February.

18 Okay. So they should have gotten a big -- a
19 boost in March, if they showed \$100,000. But -- okay.

20 Don't you think that's enough to show that
21 with the -- if you're satisfied that the -- that Mr.
22 Ofshtein can and will make these contributions,
23 wouldn't that be enough?

24 MS. WEINBERGER: Well, Your Honor, two
25 arguments.

1 One, if the Debtor's principal was liable all
2 this time, why wasn't he making plans -- making
3 payments?

4 THE COURT: Excellent --

5 MS. WEINBERGER: And that's --

6 THE COURT: Excellent question.

7 MS. WEINBERGER: And that -- and that's,
8 perhaps, you know --

9 THE COURT: We hear mumble, mumble, bad
10 management. We've changed. It's all different now.

11 Of course, Mr. Ofshtein was always the
12 principal, but -- so what, you know.

13 MR. JACOBS: He was the manager, Your Honor.

14 That's -- that's --

15 THE COURT: Well, he -- he has the bad
16 judgment to delegate the management to somebody else.

17 MR. JACOBS: No dispute there.

18 MS. WEINBERGER: And then the second question
19 --

20 THE COURT: And he wasn't -- he wasn't
21 contributing money to fund the -- fund the restaurant
22 at that point.

23 MR. JACOBS: Your Honor, as far as I know,
24 they didn't know what was going on one way or the other
25 until we actually took a good look at it when we took

1 over the case after the last Chapter 11.

2 THE COURT: Until you rode in on your white
3 horse to save the day. Okay.

4 MR. JACOBS: Well, I'll let -- if March was in
5 harbinger for the rest of the year, this should be a
6 very good year for the Debtor.

7 THE COURT: Yeah. Okay.

8 But, anyway, you were saying?

9 MS. WEINBERGER: And then another point is
10 that this plan funding agreement, although it may
11 obligate the principal to make the payments, there's
12 nothing independently saying that the principal
13 actually has the financial wherewithal to make these
14 payments.

15 While the -- while the Debtor did disclose
16 some confidential financial information regarding the
17 principals law firm's financial wherewithal to -- in
18 terms of profit, there's no individual affidavit from
19 the principal saying, that he actually has the cash.

20 THE COURT: Yeah.

21 Well, let's -- let's think about what we --
22 what we would want to see to satisfy ourselves on that
23 point. And maybe your office wants to -- to take -- to
24 conduct some discovery. But you can tell me what it is
25 you want to see in terms of additional support for the

1 -- his -- his assertion that he's going to be able to
2 make these payments.

3 MR. JACOBS: The affidavit they requested?

4 MS. WEINBERGER: Perhaps an affidavit.

5 THE COURT: That --

6 MS. WEINBERGER: But, Your Honor, that this
7 information should be made public and, at the very
8 least, available to the Court to satisfy the concerns
9 of -- of both the United States Trustee, the Court and
10 the creditors, that this plan will actually not
11 default, because there's enough cash.

12 THE COURT: Just an affidavit?

13 Anything else?

14 MS. WEINBERGER: Ah --

15 MR. DOYAGA: Judge, if I may. usually there's
16 a period of track record of making those deposits even
17 to escrow, to show that they can be made.

18 And that's a -- that's another way that
19 that's done traditionally.

20 THE COURT: Well, he's -- the -- the Debtor's
21 principal, did pay --

22 MR. DOYAGA: That's correct.

23 THE COURT: -- a substantial chunk of money
24 last year to bring your client current.

25 MR. DOYAGA: That's correct.

1 THE COURT: Correct?

2 MR. DOYAGA: That's correct, Judge.

3 I'm just -- I'm just trying to suggest an
4 (indiscernible).

5 THE COURT: Well, do you think you -- you --
6 what do you suggesting?

7 Are you suggesting that we differ
8 confirmation for a number of months or something like
9 that?

10 I mean, there would -- there -- it wouldn't
11 be any need for a contribution at this point.

12 MR. DOYAGA: No, no, Judge, I'm --

13 THE COURT: Because he's -- they 've got the
14 cash right now. I guess.

15 MR. DOYAGA: No, I understand, Judge.

16 I'm just trying to suggest the solution.

17 THE COURT: I'm just -- well, I'm trying to
18 understand what you're sug -- what you -- what you're
19 suggesting.

20 MR. DOYAGA: It -- it -- general -- it -- very
21 often what's done is, they show a track record of --

22 THE COURT: But --

23 MR. DOYAGA: -- making the deposits. But
24 now we're here --

25 THE COURT: Have -- have they done -- have

1 they not done that?

2 Or how would we do -- how would we --

3 MR. DOYAGA: No, you make --

4 THE COURT: -- how would we do that?

5 MR. DOYAGA: Your Honor, you make the good
6 point that they paid those -- those rental arrears. So
7 they have made those payments --

8 THE COURT: Okay.

9 MR. DOYAGA: -- through -- so I get it. I
10 understand.

11 MS. WEINBERGER: I -- yes, Your Honor. The --
12 the very minimum that the Debtor's principal should
13 sign an affidavit that he has the financial wherewithal
14 to make the -- the -- the make up the shortfall.

15 THE COURT: Do you want more detail than that?

16 MS. WEINBERGER: Well, that --

17 THE COURT: Do you want to see his individual
18 tax return?

19 I think that might make sense. 'Cause he --
20 I'm sure he signs a -- he files an individual return as
21 well, correct?

22 We don't -- we know -- we don't know what
23 other obligations he has.

24 MR. JACOBS: Your Honor, I would suggest --

25 THE COURT: What other business interests he

1 has.

2 Umm.

3 MR. JACOBS: Your Honor, I would suggest that
4 in addition to the affidavits we can get a personal
5 financial statement, again, we have by Mr. Abramowitz
6 is familiar with the Debtor's operations as well as the
7 principal's, ah, finances. And that should be
8 sufficient.

9 THE COURT: Get a bank statement?

10 MR. JACOBS: Well, I've already provided them
11 --

12 THE COURT: Is that -- what -- is that what
13 you just said? I didn't --

14 MR. JACOBS: No, a personal financial
15 statement.

16 THE COURT: Peroneal financial statement.

17 MR. JACOBS: Right. In addition to the
18 affidavit.

19 THE COURT: Well, what about a personal tax
20 return?

21 MR. JACOBS: If that's absolutely necessary,
22 Your Honor, we -- we could do that; but I'd rather put
23 that in the terms of a private confidential showing to
24 the Trustee's Office than rather than make it public.

25 MS. WEINBERGER: Your Honor, I -- I've -- the

1 U.S. Trustee believes that an affidavit should suffice,
2 for, at the very least, to piggyback on this -- this
3 executed agreement obligating the principal to make
4 payments.

5 'Cause, if he signs under the penalty of
6 perjury that he has the financial wherewithal to make
7 the payments, then, that should be able to stand on its
8 own.

9 MR. JACOBS: It's agreeable to the Debtor.

10 THE COURT: All right. Okay. That's fine
11 then.

12 MR. JACOBS: Thank you.

13 THE COURT: Anything else?

14 Any other objections from the Trustee's
15 Office?

16 MS. WEINBERGER: No, Your Honor. The two
17 other issues regarding the Department of Labor claim
18 and the New York State Taxing Authority claim; both of
19 them resolved, and the Debtor will update the
20 confirmation order with the appropriate language.

21 THE COURT: Okay. All right.

22 MS. WEINBERGER: Thank you.

23 THE COURT: What about you, Mr. Doyaga?

24 MR. DOYAGA: Judge, my objection, they did pay
25 the April rent, since I put in the objection.

1 THE COURT: So the issue is they've been
2 paying the rent late every month; right?

3 MR. DOYAGA: Yeah.

4 THE COURT: So what does that say about their
5 ability to make plan payments going forward?

6 MR. DOYAGA: It indicates that there's a
7 problem.

8 I mean, usually people don't pay late on
9 purpose. And --

10 MR. JACOBS: Your Honor, I disagree,
11 respectfully, with Mr. Doyaga, a business is run,
12 especially ones during the colder months when their
13 income is lower; hopefully except for this last March.

14 They make payments when it's appropriate to
15 make payments. And if they pay them late, they pay the
16 late charges, which is the better use of money.

17 THE COURT: Is that okay?

18 Is that --

19 MR. JACOBS: It's in -- it's in the lease.

20 MR. DOYAGA: If she -- when it's -- when it's
21 a funding plan, it's problematic. When it's a funding
22 plan; because the theory is that when they're short the
23 funder puts forward the loan, the money.

24 So, paying late does appear to be a problem.
25 And, if there was some -- I'm here to protect my

1 client, Judge.

2 If there was a provision that confirmation or
3 a concern of paying on time.

4 But the point is, it does indicate a problem.

5 MR. JACOBS: Your Honor, I disagree.

6 I think what it really indicates is a
7 function of the dispute between a Landlord and the
8 Debtor regarding this \$26,000 water bill, which we will
9 deal with at another time.

10 But as it turns out, there is no \$26,000
11 water bill. It's a bill from the Water Department for
12 the entire building, not from my client.

13 So they never apportioned it among the
14 tenants so that his share could be determined.

15 So Mr. Doyaga's client demanded payment of
16 the whole amount. Even, including last summer when he
17 paid the settlement amount, that included \$24,000 in
18 water charges. Which is unfathomable as to being one
19 tenth (indiscernible).

20 MR. DOYAGA: But this is -- it's not about the
21 20 -- they didn't pay the 26,000. This is not about
22 that.

23 This is about the basic rent.

24 The basic rent was late.

25 That issue with the water bill is being put

1 aside for dispute over the administrative claim.

2 But that's not really accurate. It's not
3 really accurate. That's not what this is about.

4 This is about --

5 THE COURT: So is -- so --

6 MR. DOYAGA: -- ability to pay.

7 THE COURT: Okay. So, it's a very unappealing
8 position that you're taking, Mr. Jacobs; that, well,
9 the Debtor's entitled to pay late, you know.

10 If they -- as long as they pay the late --
11 the late fee, they can pay late.

12 MR. JACOBS: Well that's the agreement.

13 That's what the lease says.

14 If the lease said you had to pay it on the
15 first of the month --

16 THE COURT: If he's able -- if he's not able
17 to pay the rent, is he purposely paying the rent late
18 or is he -- he can't pay the rent on time, is what --
19 is what it tells you.

20 MR. JACOBS: Your Honor, as far as I
21 understand, they pay the rent when it's appropriate to
22 pay the rent --

23 THE COURT: What is appro -- it's appropriate
24 to pay the rent when it's due. Unless you --

25 MR. JACOBS: It's -- but --

1 THE COURT: Unless you can't pay the rent when
2 it's due, in which case, you have a penalty that you
3 have to pay.

4 So, you're telling me that they're -- you're
5 not telling me they're choosing to pay a penalty
6 because they'd rather do that. They can't pay the rent
7 on the first of the month.

8 MR. JACOBS: No, Your Honor, I think that's a
9 mis -- an overstatement.

10 There are various months in the year --

11 THE COURT: Is there -- is there any month
12 that they paid the rent on the first of the month?

13 MR. DOYAGA: Not in the last five months, Your
14 Honor.

15 MR. JACOBS: The last five months are the
16 slowest months of the year.

17 MR. DOYAGA: It's a funded plan. It's not
18 about the operations of the -- the idea is that they're
19 going to be funding it.

20 I --

21 MR. JACOBS: Your Honor, if the --

22 MR. DOYAGA: I --

23 MR. JACOBS: If the Landlord requires some
24 sort of assurance the rent will be paid on time, I
25 could provide something to that effect. And if you

1 want to increase it -- the penalty --

2 THE COURT: Okay. What would be -- what would
3 be the nature of the assurance?

4 MR. JACOBS: That Mr. Ofshtein will cover any
5 payment that has to do by the tenth of the month,
6 whenever it's due, and make sure it gets paid.

7 THE COURT: So when's it due and when's the
8 late period?

9 MR. JACOBS: Well, it's due -- due by the 5th,
10 I believe, if my recollection is correct.

11 THE COURT: And when's the period after --
12 after which -- during which a late -- you -- you -- so
13 you can pay it up 'til when with the last charge?

14 MR. JACOBS: My memory's from the 5th --

15 THE COURT: Without being in default?

16 MR. JACOBS: -- from the 5th to the 10th. But
17 I -- I'll have to take a look at the least, Judge.

18 But I -- I think the suggestion that the
19 principal undertake to -- to guarantee it, in effect,
20 with some kind of provision or confirmation order would
21 be satisfactory.

22 But, of course, it doesn't go to the question
23 of feasibility.

24 THE COURT: So you're --

25 MR. DOYAGA: You're Honor --

1 THE COURT: You're asking for a guarantee of
2 the lease by the principal?

3 MR. JACOBS: No, the payment that's due. The
4 monthly payment.

5 THE COURT: Ah-huh.

6 MR. JACOBS: That's really -- that's really
7 what he's doing.

8 THE COURT: Right.

9 MR. JACOBS: Isn't it?

10 MR. DOYAGA: Right.

11 MR. JACOBS: Your Honor, I've just spoken with
12 Mr. Abramowitz, the accountant, who advises that the
13 Debtor would be willing to put up two months of rents
14 in advance to cover any late charges, et cetera, and
15 whatever Mr. Doyaga's client believes is due.

16 But as I understand it, it's a matter of a
17 couple of days by the time they pay the rent. It's not
18 like it's due on the 10th and it's not paid until the
19 29th.

20 It's late.

21 MR. DOYAGA: That is true.

22 MR. JACOBS: But if I put two months in a --
23 in a -- in a security account, and hold it in escrow,
24 and he hasn't the ability to draw on it, whenever he
25 thinks it late, that's no problem.

1 THE COURT: Don't you think that should be
2 sufficient, Mr. Doyaga?

3 MR. DOYAGA: Yes, Judge.

4 THE COURT: Okay. All right.

5 All right.

6 So, you'll need to file that affidavit before
7 you submit your opera -- your confirmation. And I'd
8 like you to now make your proffer with respect to
9 Section 1129.

10 MR. JACOBS: Yes, Your Honor.

11 THE COURT: Unless anybody else wants to be
12 heard before that.

13 Okay. Go ahead.

14 MR. JACOBS: Your Honor with respect to this
15 plan --

16 THE COURT: And I -- I am assuming this is a
17 proffer of the testimony that Mr. Ofshtein would give
18 if he were called to the stand, and that he will be
19 asked, once you're done, to say whether -- to -- to
20 indicate, under penalty of perjury, that he -- that
21 this is, in fact, the testimony he would offer?

22 MR. JACOBS: Yes, Your Honor.

23 THE COURT: Okay. Go ahead.

24 MR. JACOBS: This is the only proposed plan in
25 this case. There are no other competing plans.

1 The Proponent is entitled to propose this
2 plan because he has confirmed the disclosure and this
3 would be (indiscernible) requirements of -- I'm -- I'm
4 sorry.

5 The plan is conformed to disclosure, so it
6 states the requirements 1123 and 1125.

7 The plan was proposed in good faith and not
8 by any means was written by law.

9 The purpose of the plan is not the avoidance
10 of taxes, as evident from just the plan, by itself, as
11 well as the involvement of repayment of taxes.

12 Under Section 4 -- 5, the Securities Act
13 1933.

14 The plan prohibits the issuance of non-voting
15 equity securities and provides for an appropriate
16 distribution of voting power and one of the equity
17 security holders, which is Mr. Ofshtein.

18 The administrative claims, the proponent has
19 disclosed all payments already made, or proposed to be
20 made under the plan, any payments to be made prior to
21 the confirmation if it reasonable.

22 The only one that is at issue, as Mr. Doyaga
23 had mentioned, is this water bill for the sum of
24 \$25,000.

25 Which the Debtor intends to object to or he

1 can resolve that later.

2 All administrative or involuntary gap
3 expenses will be paid in full on the effective date, if
4 any. We don't believe there are any. We believe there
5 was one tax claim from the New York State Department of
6 Finance and Taxation; that we -- with respect to some
7 \$14,000, which was paid.

8 There's as penalty part of that on top of it.
9 But that's supposed to be refunded as soon as they get
10 the payment for the 14,000, I have advised.

11 With respect to the claims and interest; all
12 the classes -- claims -- all the claims and interest
13 have been properly designated.

14 We have had no objections to any of the
15 designations.

16 In fact, there was one minor change we made
17 during the plan -- plan discussion period, in, I think,
18 it was January, where a minor change was made.

19 Everybody else has agreed to it.

20 We believe the plan is in the best interest
21 of the Debtor and the Creditors.

22 The -- any dissenting holders of claims or
23 interests will receive or retain a property valued as
24 of the effective date of the plan, that is not less
25 than the amount that the holder is so received or

1 retained that the Debtor will liquidate it.

2 As the Court may recall, this is an unusual
3 kind of case. I don't know how many you've seen like
4 this.

5 The assets in the -- of the Debtor are
6 relatively small.

7 It's a restaurant that leases stuff and has
8 old equipment.

9 However the operation of it can be
10 profitable, as the Court has seen.

11 So, the only way that anybody gets paid in
12 this situation is, if the Debtor continues and
13 operating.

14 That's the idea.

15 So, if the Creditors were getting more now
16 than they would get any other way, there's no other way
17 to get any (indiscernible) to get anything.

18 With respect to the holders of secured
19 claims.

20 The holder of the claims and member of a
21 class to which Section 111(b)1 applies:

22 Such holder will receive or retain, under the
23 plan property, a value that is not less than the value
24 of such creditor's interest in the collateral securing
25 the claim.

1 As I indicated, there's very little
2 collateral anyway.

3 Okay.

4 THE COURT: What about -- what about the
5 likelihood --

6 MR. JACOBS: I'm sorry, Your Honor, I can't
7 hear you.

8 THE COURT: -- of the confirmation will be
9 followed by liquidation or the need for further
10 financial reorganization?

11 MR. JACOBS: I'm sorry, I -- I can't hear you,
12 Your Honor.

13 THE COURT: I said, what about feasibility?

14 MR. JACOBS: Yes,

15 THE COURT: You haven't addressed that.

16 MR. JACOBS: The means of the plan to be
17 executed, I believe, are clear.

18 Adequately, it's been established, and we
19 provided for in the confirmation plan.

20 It's not likely to followed by liquidation
21 because of the guarantee by Mr. Ofshtein to cover any
22 shortage in the plan payments, including the additional
23 \$500 a month from the amended proof of claim filed by
24 New York State.

25 It's still well within in his capability, as

1 well as the Debtor's apparent growth now.

2 If -- if March's profits are any indication,
3 there shouldn't be any problem.

4 THE COURT: It's -- it's hard to generalize
5 from one month.

6 MR. JACOBS: I agree. And the -- and the
7 Debtor's income, we know, of course would back the
8 monthly operating reports, very significantly from up
9 to \$75,000 in profits to up to \$90,000 loss; it's true.

10 But, hopefully, the new management situation
11 may be --

12 THE COURT: All right. Well, tell me about
13 this new management situation.

14 Who is the old management?

15 Who's the new management?

16 MR. JACOBS: The old management --

17 THE COURT: When did that get changed?

18 MR. JACOBS: That was changed in the -- during
19 the, or just after the old --

20 THE COURT: Okay. Who -- who are -- who --
21 who is management?

22 We say management.

23 One person?

24 Two people?

25 What are their names?

1 What are their jobs?

2 MR. JACOBS: And there are at least several
3 people in management. Mr. -- what's his last name?

4 (Someone speaking, indiscernible)

5 MR. JACOBS: Robert, it's a Russian name, I
6 can't pronounce it, Your Honor.

7 It starts with Sof -- Petro something.

8 He's running the operation now, as opposed to
9 whatever is being run before.

10 THE COURT: Okay. Before when?

11 MR. JACOBS: In -- during the prior Chapter
12 11, that they could not comply with. They had --

13 THE COURT: Okay. And well, what happened
14 before that?

15 I mean, what's -- give me -- give me some
16 more history here.

17 MR. JACOBS: All right, is -- as I understand
18 --

19 THE COURT: I've heard of that -- I've heard
20 old management was bad, new management's great.

21 I don't know when -- who they were. When
22 they changed. What -- what is -- is there one manager?

23 Is there -- are there two managers?

24 MR. JACOBS: Your Honor, what happened --

25 THE COURT: What's Mr. Ofshtein's job?

1 Is he the manager?

2 MR. JACOBS: No, Your Honor.

3 What I -- what I'm advised -- remember, I was
4 invited from the first Chapter 11.

5 What I understand --

6 THE COURT: Then you must understand the
7 history of it as -- as their counsel --

8 MR. JACOBS: Yes.

9 THE COURT: -- as their counsel.

10 MR. JACOBS: Yes. And what --

11 THE COURT: And then since you're making the
12 assertion to me that -- that everything is going to be
13 fine, feasibility-wise, notwithstanding their prior
14 problems because of this change in management; you must
15 know -- you must understand -- you must have probed
16 that -- that assertion, I assume.

17 MR. JACOBS: Yes, Your Honor.

18 THE COURT: So let's hear.

19 MR. JACOBS: What happened, as I am advised,
20 what happened was this.

21 They started out looking like it was going to
22 be a very successful operation. They thought --

23 THE COURT: Started out when?

24 MR. JACOBS: Back in 2015.

25 THE COURT: Okay.

1 MR. JACOBS: And they thought they were going
2 to be doing fine when they opened up.

3 As a result of the initial manager's
4 inability to control the cash flow --

5 THE COURT: And who is the initial manager?

6 MR. JACOBS: He left before I got involved.

7 THE COURT: But what was his name?

8 MR. JACOBS: I don't have a record of it
9 (indiscernible).

10 AN ATTORNEY: His name was, ah, Arthur, I
11 apologize, Your Honor, I can't recall his last name at
12 this point.

13 MR. JACOBS: This goes back two or three
14 years, Your Honor.

15 He was replaced and when I got involved --

16 THE COURT: Was he -- was he a principal?

17 Was he just -- was he an employee?

18 What was his -- how did -- how did --

19 MR. JACOBS: He was a manager. He wasn't a
20 stockholder. Strictly --

21 THE COURT: Right. But in restaurants, very
22 often, the people who are running it also have an
23 interest in the restaurant.

24 MR. JACOBS: No, he had no interest.

25 Mr. Ofshtein's the sole stock --

1 THE COURT: He was an -- he was just an
2 employee?

3 MR. JACOBS: Yes. And Mr. Ofshtein is the
4 sole stockholder, and always has been.

5 THE COURT: Okay.

6 MR. JACOBS: Right. The -- the fellow who he
7 hired to run it, Mr. Ofshtein's an attorney as of a --
8 a law practice.

9 THE COURT: Right.

10 MR. JACOBS: The fellow he hired to run it was
11 -- his name was Arthur whatever.

12 Apparently, he did not know what he was
13 doing, but told Mr. Ofshtein he did. And Mr. Ofshtein
14 relied upon him.

15 And when he found out what was going on, it
16 was already to the point where the taxes were well
17 behind -- well due, over due rather. And the --

18 THE COURT: And when -- when was that?

19 MR. JACOBS: That's in 2015, '16, when they
20 first consulted another bankruptcy attorney and filed
21 that boarded petition in two thousand -- I think it was
22 May of 20 -- 2015; which was dismissed in 2016, I
23 believe.

24 So, the -- the change in management has been
25 -- made the thing entirely different. It's a different

1 structure.

2 THE COURT: Okay. So when -- and when was the
3 new manager brought in?

4 And who is he?

5 Is it -- has there been more than one?

6 MR. OFSHTEIN: There's several.

7 May I speak.

8 THE COURT: Yes. Please. That would probably
9 be helpful.

10 MR. OFSHTEIN: Thank you.

11 THE COURT: Why don't you please stand up and
12 come to the microphone.

13 MR. OFSHTEIN: Sure.

14 THE COURT: State your name.

15 MR. OFSHTEIN: Your Honor, good afternoon.
16 It's Kiva Ofshtein, ah, principal for Prime Six.

17 Of Iron Professional, ah, Management Group,
18 American Standard Hospitality Group.

19 A completely professional --

20 THE COURT: And when did you do that?

21 MR. OFSHTEIN: I did that, I wanna say, in
22 early, the late 2016 or early 2017, I don't recall the
23 exact date. But this is a professional group. They
24 manager everything. Everything is now on point.

25 We do have our slower periods, of course,

1 but, ah, everything gets paid within the 30-day period.
2 We have high payroll. This is a very high functioning
3 restaurant with a very high capacity of employees.

4 So, payroll taxes, all of those things have
5 to come out simultaneously.

6 Ah, employees don't like to wait for their
7 paycheck, nor should they.

8 So, we're in a situation where we're always
9 crunching.

10 THE COURT: So -- so who was -- was the -- who
11 was running -- was the -- was Arthur, last name not
12 sure of, running it through -- through the prior
13 bankruptcy?

14 MR. OFSHTEIN: Correct. He was -- he was just
15 the manager that was running a business that had
16 claimed to have experience, and he -- he didn't have
17 the experience needed to run this type of operation.

18 I brought him --

19 THE COURT: And so you fired him when?

20 MR. OFSHTEIN: I don't recall the dates, Your
21 Honor, but I -- but I fired him when I realized things
22 were just, you know, in dire straights. So --

23 THE COURT: So did you hire this hospitality
24 group right -- right when -- right when that occurred?

25 Or was there something --

1 MR. OFSHTEIN: Well, it took a little bit of
2 time to find them. It took a little bit of time to
3 figure out where we were at.

4 I -- I needed to understand my options so
5 that I could get this done.

6 I'm trying to do this for four years, and
7 this is the most frustrating process.

8 I wanna get this over. I wanna get on a
9 plan. I know I can pay it. I'll sign any affidavit
10 required to make this plan go forward.

11 This is a personal responsibility for me as
12 an attorney, as a person, I realize that. And you
13 said, from the beginning, this was a -- this was a bad
14 judgment call of an investment opportunity that came
15 across my desk.

16 I made a bad judgment call, but I'm not
17 trying to shy away from it.

18 I'm trying to get it done.

19 I'm trying to get the State paid.

20 I'm trying to get the IRS paid.

21 And everybody else, you know.

22 I, sincerely feel bad about this whole
23 situation. I've never, in 20 years of practice dealt
24 with something like this.

25 Bad judgment calls should not just bury me.

1 I'm willing to make the sacrifice for the
2 next however many years to get the State paid, to get
3 the IRS paid.

4 I just wish somebody would just see that I'm
5 sincere about the possibility of getting this done,
6 Judge.

7 And I wanna get it done.

8 And this -- every time we delay it's just
9 another 30 days, 45 days, 60 days of -- of massive, ah,
10 stress of not understanding, why can't this just be
11 resolved, because it's just a very tough situation, and
12 I apologize to the Court, sincerely. I'm -- I'm sorry.

13 THE COURT: Okay. All right.

14 Thank you.

15 All right. Was there -- so where were we?

16 MR. JACOBS: We're talking about feasibility,
17 Your Honor.

18 And again, I think that covers the primary
19 issue.

20 The Debtor's income, averaging around \$11,000
21 plus what Mr. Ofshtein's backup guarantee of that, and
22 we put two months rent in the security account, to
23 cover Mr. Doyaga. I think that's sufficient clauses
24 affidavit.

25 Mr. -- Mr. Ofshtein, as you've seen by his

1 tax return, which is attached to the opposition papers,
2 to the objection; is substantial.

3 The (indiscernible) will have to cover two or
4 three thousand dollars a month, or even five thousand
5 or seven thousand a month, he had to.

6 THE COURT: All right.

7 Does anybody have any questions that they
8 wanna ask Mr. Ofshtein?

9 By way of --

10 MR. DOYAGA: No, Judge.

11 THE COURT: Okay.

12 Can you -- can you please stand up for a
13 minute, Mr. Ofshtein?

14 MR. OFSHTEIN: Sure.

15 THE COURT: Do you confirm, under penalty of
16 perjury that the proffer that you attorney has made of
17 what you're testimony would be had you been called to
18 the stand is true and accurate in all respects?

19 MR OFSHTEIN: I do, Your Honor.

20 THE COURT: Okay. Thank you.

21 MR. OFSHTEIN: Thank you.

22 THE COURT: All right.

23 MR. JACOBS: Your Honor, if I move for the
24 confirmation of the Debtor's plan, as we -- as
25 discussed.

1 THE COURT: Okay. All right.

2 So, I will -- you need to file the affidavit
3 that has been requested and you can submit a
4 confirmation order.

5 When the -- when the U.S. Trustee indicates
6 that they are satisfied with the affidavit then I will
7 sign the confirmation order.

8 MR. JACOBS: Thank you, Your Honor.

9 MS. WEINBERGER: Your Honor --

10 MR. DOYAGA: Can you see -- I'm sorry.

11 THE COURT: And if you could -- if you could
12 circulate the confirmation order to the -- the parties
13 that are present here today,

14 MR. JACOBS: Certainly. (Indiscernible) to
15 the State, I arrest sure wanna take a look at it as
16 well as Mr. Doyaga.

17 THE COURT: Okay. Thank you.

18 MS. WEINBERGER: Thank you, Your Honor.

19 THE COURT: All right. Well good luck.

20 MR. OFSHTEIN: Thank you.

21 THE COURT: Um-mm.

22 MR. JACOBS: Judge, on my motion, which,
23 obviously, as far as go (indiscernible) to the stay and
24 to dismiss, that's not happening.

25 But, part of it is a motion to compel the

1 payment of the administrative claim, which has not to
2 be heard today.

3 But I'd like to carry that aspect of the
4 motion because I do want to resolve the issue of the
5 water bill.

6 And if they're correct, that's fine. But I
7 need to have that resolved.

8 So I need an adjourn date just on that narrow
9 aspect.

10 Nothing to do with the confirmation. Well, I
11 shouldn't say nothing to do with the confirmation, but
12 I'm just saying, is that independent of confirmation.

13 'Cause their date -- there's a claim on
14 record. That maybe they have the -- they have the --

15 THE COURT: Do you have -- do you have other
16 claims objections that you're going to be filing?

17 MR. JACOBS: Your Honor, as far as I know,
18 this is the only one we're filing an objection for.

19 THE COURT: Okay.

20 MR. JACOBS: Why don't -- why don't wait until
21 we file the objection and the Court will set a date on
22 the hearing on that.

23 MR. DOYAGA: Well, the only thing is I -- I
24 don't want it to be forever. I would like it to be
25 promptly.

1 MR. JACOBS: No. It's for -- it's a week. The
2 date -- the period to file it's only 30 days after the
3 --

4 MR. DOYAGA: Okay.

5 MR. JACOBS: So it's a week.

6 MR. DOYAGA: I'll accept that.

7 THE COURT: Okay. So then there isn't --

8 MR. DOYAGA: I'll withdraw my motion.

9 THE COURT: Okay. Thank you.

10 MR. DOYAGA: Thank you.

11 MR. JACOBS: Thank you, Your Honor.

12 THE COURT: Oh, do we need a -- do we need a -
13 - I think we probably need a date for a post
14 confirmation status conference, Mr. Jacobs?

15 THE COURT CLERK: Mr. Jacobs.

16 THE COURT: I think we probably have to set a
17 date for post confirmation status conference.

18 I'll give them -- give them, July.

19 MR. JACOBS: I'm sorry.

20 THE COURT: July 11th.

21 MR. JACOBS: July 11th post conference status,
22 is okay.

23 THE COURT: At 2:30.

24 MR. JACOBS: Two thirty.

25 THE COURT: Um-mm.

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MR. JACOBS: Thank you, Your Honor.

(Whereupon, the proceedings were concluded)

1 CERTIFICATE

2
3
4
5 I certify that the foregoing is a correct
6 transcript from the electronic sound recording of the
7 proceedings in the above-entitled matter, from 2:42:27
8 PM to 3:15:40 PM, is prepared to the best of my
9 knowledge and ability.
10
11
12
13

14 ----- /s/ Diane Amarin -----

----- 05/21/2018 -----

15 Diane Amarin

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